

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF MUSOMA**

**AT MUSOMA**

**CIVIL REFERENCE No. 3 OF 2022**

*(From the District Court of Musoma at Musoma in Taxation Cause No. 10  
of 2021 & Original Civil Case No. 27 of 2021)*

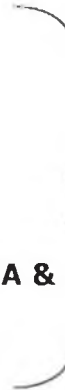
**1. MAKOYE PHINIAS**

**2. JUMA MALIMA**

**3. VICENT MAGATI**

**4. PHINIAS BUNYINYIGA &**

**5. GEORGE OONGO**



..... **APPLICANTS**

***Versus***

**MeLT GINNING CO. LTD ..... RESPONDENT**

***EX-PARTE RULING***

**10.08.2022 & 11.08.2022**

**Mtulya, J.:**

The point of law was raised resisting the competence of the **District Court of Musoma at Musoma** (the district court) in determining a **Civil Case No. 27 of 2021** (the case) for want of pecuniary jurisdiction of the district court in a claim of Tanzanian Shillings Ten Million Five Hundred Thirty Eight Thousand Four Hundred and Eighty (10,538,480/=Tshs). After citation and interpretation of section 13 of the **Civil Procedure Code** [Cap. 33

R.E. 2019] (the Code) and section 18 (1) (a) (ii) of the **Magistrates' Courts Act** [Cap. 11 R.E. 2019] (the Act) and precedents in **Fanuel Mantiri Ng'unda v. Herman M. Nguda**, Civil Appeal No. 8 of 1995 and **M/s Tanzania China Friendship Textile Co. Ltd v. Our Lady of the Usambara Sisters** [2006] TLR 70, the district court, at page 6 of the Ruling concluded that: *for the foregoing, I hold that this court lacks jurisdiction to try and determine this case for want of pecuniary jurisdiction.* Finally, the district court ruled that:

*I hereby dismiss Civil Case No. 10 of 2021...the plaintiffs are at liberty to file a fresh suit in the court of competent jurisdiction subject to the law of limitation.*  
***Cost to be in due course.***

(Emphasis supplied).

It is the highlighted part of the quotation which prompted the respondent to prefer **Taxation Cause No. 10 of 2021** (the cause) in the district court claiming costs of the case. The cause was protested by the applicants contending that the district court in the case did not order any costs to be paid before completion of the dispute, hence they lodged a point of preliminary objection. The point was overruled by the district court, and

without affording the parties right to be heard on merit, the district court proceeded with the determination of the substance of the main suit. The overruling of the point and determination of the merit of the case without applicants' materials on the record aggrieved the applicants hence preferred the present Reference praying this court to set aside the proceedings and nullify the decision of the district court in the cause for want of proper interpretation of the Ruling in terms of costs.

The Reference was scheduled for hearing twice in this court without appearance of the respondent despite proof of service duly signed and stamped by the respondent hence the Reference was ordered to proceed *ex-parte* as against the respondent. On 10<sup>th</sup> August 2022, the applicants appeared in this court for registration of materials in favour of the Reference. The materials collected from the first and second applicants show that the applicants had brought the Reference to protest the interpretation of the district court in the cause, as the district court in the cause ordered payment of costs in absence of any order supporting the interpretation.

I have perused the complained order of the district court in the case. The last sentence in the decision pronounced on 17<sup>th</sup>

November 2021, shows that: *cost to be in the due course*, which is obvious that costs to follow event of the new dispute to be lodged in the primary court, as displayed at page 6 of the Ruling of the district court. It is unfortunate that the record is silent on filing of the fresh and proper suit at the primary court. Similarly, the record is silent on any other order on the consequence of failure to lodge a fresh and proper case in a competent forum entrusted with the mandate to hear and determine the dispute between the parties on the indicated claims.

Having said so, and noting that there is no any order pressing for costs to any party in the case at the district court, I have decided to set aside proceedings and nullify the Ruling of the district court in the cause delivered on 6<sup>th</sup> April 2022 for want of proper interpretation of the order of the district court in the cause pronounced on 17<sup>th</sup> November 2021.

This court is a temple of justice and cannot justifiably close its eyes when seeing breach a vivid breach of interpretation of writings in court's decisions (see: **Diamond Trust Bank Tanzania Ltd v. Idrisa Shehe Mohamed**, Civil Appeal No. 262 of 2017 and **Nyangi Marwa Nyangi v. Mwita Petro**, Misc. Land Appeal Case No. 4 of 2022). I order no costs in the present Reference as the

respondent declined appearance, which may be interpreted as conceding the complaint of the applicants in this court.

Accordingly ordered.

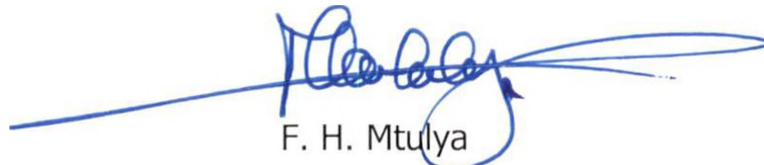


  
F. H. Mtulya

**Judge**

11.08.2022

This Ruling was delivered in chambers under the seal of this court in the presence of the applicants, namely: Juma Malima, Phinias Bunyinyiga and George Oongo and in absence of the respondent, MeLT Ginning Co. Ltd.

  
F. H. Mtulya

**Judge**

11.08.2022